

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JAMES R. NEKVASIL, JR.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACT. NO. 2:20-cv-274-ECM
)	(WO)
DAVID BREWER, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM OPINION and ORDER

On August 3, 2023, the Magistrate Judge entered a Recommendation that the Plaintiff's *Bivens*¹ action be dismissed for failing to properly exhaust an available administrative remedy. (Doc. 52). The Plaintiff filed objections to the Recommendation. (Doc. 53). After carefully reviewing the record in this case, the Recommendation of the Magistrate Judge, and the Plaintiff's objections, the Court concludes that the Plaintiff's objections are due to be overruled, the Recommendation of the Magistrate Judge is due to be adopted, and this case is due to be dismissed.

When a party objects to a Magistrate Judge's Report and Recommendation, the district court must review the disputed portions *de novo*. 28 U.S.C. § 636(b)(1). *See also United States v. Raddatz*, 447 U.S. 667, 674 (1980). The district court "may accept, reject, or modify the recommended disposition; receive further evidence; or resubmit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1). *De novo* review requires

¹ *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

that the district court independently consider factual issues based on the record. *Jeffrey S. by Ernest S. v. State Bd. of Educ. of State of Ga.*, 896 F.2d 507, 513 (11th Cir. 1990). However, objections to the Magistrate Judge's Report and Recommendation must be sufficiently specific in order to warrant *de novo* review. *See Stokes v. Singletary*, 952 F.2d 1567, 1576 (11th Cir. 1992) (“[w]henver any party files a timely and specific objection to a finding of fact by a magistrate, the district court has an obligation to conduct a *de novo* review of the record with respect to that factual issue.”)(quoting *LoConte v. Dugger*, 847 F.2d 745, 750 (11th Cir. 1988)). Otherwise, a Report and Recommendation is reviewed for clear error.

The Court has carefully reviewed the record in this case, the Recommendation of the Magistrate Judge, and the Plaintiff's objections. The Plaintiff makes conclusory assertions that he is entitled to relief but does not identify any error by the Magistrate Judge or challenge the Court's legal conclusions that his claims are unexhausted. The Plaintiff's objections are a recitation of his claims that are unsupported by the record. His general objections are reviewed for clear error and are due to be overruled.

Accordingly, upon an independent review of the file in this case and for good cause, it is

ORDERED as follows that:

1. The Plaintiff's objections (doc. 53) are OVERRULED.
2. The Recommendation of the Magistrate Judge (doc. 52) is ADOPTED.

3. The Defendants' motion to dismiss (doc. 38) is GRANTED because the Plaintiff failed to properly exhaust an administrative remedy available to him before initiating this civil action.

4. The Plaintiff's *Bivens* action is DISMISSED with prejudice pursuant to 42 U.S.C. § 1997e(a) for the Plaintiff's failure to properly exhaust an administrative remedy previously available to him.

5. This case is dismissed.

A separate final judgment will be entered.

DONE this 21st day of August, 2023.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE